

To: Director John Goss
From: Mr. Rees Madsen

As requested, here is a written version of my statement presented at the Public Meeting held in Portage, Indiana on August 25, 2004. I appreciated the opportunity to share our views on the draft Compact and Agreement. In the interest of time, my verbal presentation at the meeting was a summary of this written text. I suggest using the attachment in place of a transcription from the recording.

Thanks for the effort you and members of the public meeting team putting into conducting these public meetings. Indiana is doing a great job in trying to feedback from all the stakeholders.

Rees Madsen

Rees C. Madsen
Senior Environmental Consultant
BP Refining Shared Resources-Water
Whiting Refinery, Indiana
phone: 219-473-3074
fax 219-473-5339

Annex 2001 Public Meeting

**Portage, Indiana
August 25, 2004**

Statement by: Rees Madsen
Senior Environmental Consultant
BP
BP Whiting Refinery
2815 Indianapolis Blvd.
Whiting, IN 46394

Good afternoon. My name is Rees Madsen. I work at BP's petroleum refinery in Whiting, Indiana. My job involves advising the refinery on legislative and regulatory issues affecting water availability and discharge. As a result, I have been following with interest the work on Annex 2001 from its inception to the point where the current draft Compact and draft Agreement have been issued for review.

We are still in the process of completing review and preparation of comments on the drafts. We fully support the protection of the Great Lakes and retention of their control at the state and province level.

But we have identified some concerns with the draft Agreement and Compact. So even though we are still working on our comments, we felt it was appropriate to mention a few of these concerns here today.

BP's Whiting Refinery withdraws water from Lake Michigan, and returns most of it to the Lake after use in cooling and processes associated with refining petroleum into products such as gasoline. We are conscious of the importance of Lake Michigan for uses beyond supporting manufacturing, such as for drinking water and recreation. As a result of our reliance on Lake Michigan water, we are always interested in initiatives that affect the availability of water and its use.

This includes the Annex 2001 initiative that we understood has the objective of solving the problem of how to handle proposals for major new or increased diversions of water for consumption outside the Great Lakes area. For example, to prevent one state or province from unilaterally deciding to sell most of Lake Michigan's water to a user outside of the Basin.

In general, BP's concerns with the draft Agreement and Compact involve where the drafts have moved away from that original objective. These can be summarized in two observations: 1. The initiative should not address water currently being withdrawn by existing users of Great Lakes water, and 2. The initiative should strictly address providing the eight states and two Canadian

provinces with a workable mechanism for jointly addressing proposals for major new or increased uses of water that would divert water out of the Basin.

More specifically, we are concerned with how the drafts address permit programs for existing water users, mandatory water conservation programs for existing water users, and reporting/data collection measures for existing water users.

Our review of the draft Compact and Agreement suggests that the initiative would essentially establish a permit program that would place new, additional requirements on existing water users. The current Compact language in Section 9.3, for example, could be interpreted as calling for regulation and "permitting" of all withdrawals, not just new or increased withdrawals. We don't see why this is necessary, nor how such a result fits with the purpose of the Annex 2001 initiative. It seems clear from the Compact's Article 3 and the Agreement's Article 201 that the provisions of the Agreement and Compact are intended to only apply to new or increased diversions, not existing withdrawals. Even more on-point, the Agreement's Section V of Appendix 1 essentially restates Section 9.3 but includes the term "New or Increased Withdrawal" instead of just "...a Withdrawal" as found in Section 9.3.

In addition, the draft documents mandate water conservation programs for existing facilities (e.g Agreement Article 302 / Compact Section 9.1.). We support water conservation as a practice. But we see no need to add a regional authority to encourage water conservation through such things as "permitting and enforcement" as discussed in Appendix 2, Section 4.D of the draft Agreement. We support promoting voluntary water conservation efforts for existing withdrawals. However, provisions for these efforts do not need to be included in the Compact. There are at least two reasons for this conclusion.

First, the provisions in the Compact's Section 9.1 and the Agreement's Article 302 are out of synch with the focus of the Compact on new or increased diversions and in fact don't fit with the rest of the Compact's Article 9.

Second, water conservation is not something that requires regional action through Annex 2001. Efforts to promote and encourage water conservation can already be carried out by individual states. We see no need for a regional regulatory layer. The driver for the Compact is to protect against ill advised unilateral local decisions regarding major new or increased diversions, not to implement a regional program to reduce existing withdrawals as Section 9.1 explicitly requires. We see no need for Regional oversight on water conservation efforts as there is for major water diversion proposals.

Another concern is that the purpose and scope for the Water Resource Inventory and Registration and Reporting of Withdrawals is not clear in the drafts; specifically Agreement Article 301 and Compact Article 7. We currently file annual reports with Indiana's DNR showing monthly withdrawals. More is needed to justify and limit the additional burdens that would be placed on existing users of water. These burdens could include installation of new flow measurement equipment to get the type of water balance information required,

and additional time of employees to meet the reporting requirements in Compact Article 7 and Agreement Article 301.

We support collecting data that will help better manage the Great Lakes Basin water resource. We also recognize the importance of a baseline in addressing new or increased withdrawal proposals. It must be considered, however, that this does not come without cost. Facilities are continuously being asked or required to provide more information. Costs for responding add up and impact competitiveness of the enterprise with non-Great Lakes Basin locations and increase costs of providing services and products to customers.

Information requests also have a way of growing beyond the original scope. We are just asking that the scope be clearly defined and limited. For example, there is a concern that "registration" under the Compact is a precursor to a regional permitting program for existing withdrawals or that the scope may be allowed to "creep" so as to become in effect a regional permit program.

In summary, we don't think these types of provisions were intended to be in the Annex's` scope and therefore should not be in the Compact or Agreement. Such additional burdens from a new regional authority on already highly regulated existing water users might make their operations non-competitive and cause cutbacks or closures in favor of investments elsewhere.

We are also very concerned that, as proposed, the Annex 2001 provisions will make it unnecessarily and unreasonably difficult and expensive for somebody to expand their operations or build a new facility in a Great Lakes state that requires water. The Council of Great Lakes Industries, the American Chemistry Council and others are preparing extensive comments on this aspect. We recommend serious consideration of those comments.

Thank you for the opportunity to share our views.

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